

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5102 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

AMRISH JAGMOHAN PARIKH

Appearance:

Mr A.G.Uraizee, AGP, for Petitioner

MR PM BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 11/04/96

ORAL JUDGEMENT

Whether the Gujarat Revenue Tribunal, Ahmedabad, has committed serious error of law in refusing to condone the delay of three years and seven days in filing revision application under section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) and if yes, whether the present petition suffers from the vice of delay and laches in filing the present petition under

Article 226/227 of the Constitution, is the central theme of the present petition.

2. The Mamlatdar and ALT, Gandhinagar in tenancy case No.2580/82 decided on 30.4.83 held that there was no violation of the provisions of section 63 of the Tenancy Act and the respondent No.1, A.J.Parikh is an agriculturist. The matter was taken in suo motu revision before the Collector in Revision No.170/83 under section 76-A of the Tenancy Act. The said revision came to be dismissed confirming the order of the Mamlatdar on 29.12.83. The order was further questioned by filing a revision application No.162/87 before the Gujarat Revenue Tribunal, Ahmedabad, which also came to be rejected on 5.9.91 on the ground of delay in filing the revision. Thus the proceedings initiated by the Mamlatdar and ALT under section 84-C of the Tenancy Act on the allegation of violation of the provisions of section 63 came to be withdrawn and the Mamlatdar held that in view of the provisions of section 2(2) and 2(6) of the Tenancy Act, respondent No.1 is an agriculturist and therefore, no permission was necessary for purchase of agricultural property of respondent No.2 under section 63 of the Tenancy Act. In short, it was held that there was no breach of the provisions of section 63 and therefore there was no case for taking action under section 84-C of the Tenancy Act. The order of the Mamlatdar came to be confirmed in a suo motu revision by the Collector and the revision before the Gujarat Revenue Tribunal came to be rejected on the ground of delay. Hence this petition came to be filed on 17.4.95.

3. The petition is filed more than 4 years and 7 months after the impugned order of the Gujarat Revenue Tribunal recorded on 5.9.91. There is delay of more than 4 years and 7 months in filing the present petition and the petitioner has stated in para 6 of the petition the grounds for belated filing of petition. According to the case of the petitioner, there was correspondence between the Revenue and Legal Department of the State and also between the Departments and the Office of the Collector and also with the Office of the Government Pleader, Ahmedabad. Para 6 of the petition pertaining to the explanation for filing petition late is material which reads as under :

"6. The petitioner says that in this case the Tribunal decided the matter on 5.9.1991. Thereafter the Revenue Department corresponded with the Legal Department, Collector and Prant Officer and ultimately on 6.2.1993, the Legal

Department informed the Government Pleader, High Court that in this matter the Government desires to file writ petition before the High Court. Thereafter the Office of the Government Pleader, High Court informed the concerned department to send the relevant papers and on 1.3.1993 certain papers were delivered to the Office of the Government Pleader. However, as the records were incomplete the Office of the Government Pleader, High Court addressed a letter to the Revenue Department. Thereafter the Officer of the Office of the Dy. Collector came to High Court on 20.7.1994 with certain details. But as still the details were incomplete, the Office of the Government Pleader again requested the concerned department to send the complete details and ultimately in the month of February 1995 all the details were received by the Office of the Government Pleader, High Court and thereafter the writ petition is prepared and filed before this Hon'ble Court. The petitioner, therefore, requests this Hon'ble Court to condone the delay, if any, in filing the writ petition in this behalf."

The aforesaid explanation in para 6 of the petition is very general without furnishing particulars as to what delay occurred where. On the plain perusal of para 6 of the petition, it could safely be concluded that there is no sufficient explanation or reasonable cause for inordinate delay of more than 4 years and 7 months in filing the petition after the passing of the impugned order by the Gujarat Revenue Tribunal. Responsible officers dealing with this file in the concerned Departments and the Office of the Collector have also not filed affidavits. The affidavit filed by one Under Secretary of the Revenue Department is also too general and vague. The grounds stated for condonation of delay in filing this petition late after 4 years and 7 months is not acceptable and sustainable. It does not constitute a reasonable and sufficient cause. Therefore, the petition suffers from the vice of delay and laches and the reason for such an inordinate delay is not excusable and sufficient. There is a definite purpose and policy in evolution of the doctrine of delay and laches in filing substantive petition under Article 226/227 of the Constitution of India.

4. Even if this Court were to condone the delay and excuse the belated action in filing the petition, then also, the impugned order could not be said to be

vulnerable. Ordinarily, the Court is required to take a lenient and liberal approach in appreciating and adjudicating the issue of condonation of delay so that a meritorious matter is not thrown overboard on a technical ground. However, it cannot be forgotten that a party is required to explain and account for delay in filing an application, appeal or revision. Incidentally, while examining the merits of the impugned order of the Revenue Tribunal this Court is fully satisfied that it is justified in the circumstances of the the case.

5. In view of the provisions of section 76 of the Tenancy Act, the revision is required to be filed within a spell of 60 days from the date of passing of the impugned order. The impugned order of the Collector was passed in suo motu revision No.170/83 on 29.12.83. The revision was filed after 3 years and 7 days. The said delay is not condoned by the Tribunal for sufficient grounds. Thus, there was no sufficient ground for condonation of delay as held by the Tribunal which appears to be fully justified. It is very clear from the present petition that the certified true copy of the impugned order of the Deputy Collector recorded in suo motu revision was applied for one year and eight months after the passing of the order. No reasonable explanation was placed on record as to what prompted the Government not to file an application for certified copy before the expiry of more than 1 year and 8 months. Apart from that, even after getting the certified true copy of the order on 29.9.86, the revision came to be filed on 7.1.87. No any reason was placed on record as to why again there was delay of 95 days in filing revision after the affidavit was sworn. It is rightly observed by the Tribunal in the impugned order that in the case of Gandhinagar district there is only one district i.e. Gandhinagar and it has only one Deputy Collector and the process of filing revision before the Gujarat Revenue Tribunal could have been completed well in time, but there was an exhibition of wanton, gross, inordinate delay on the part of the concerned Departments. There was no reasonable, acceptable, sufficient cause or ground for filing the revision application late. Having regard to the factual scenario emerging from the record of the case, even while looking at the merits incidentally, this Court is unable to find that the impugned order is in any way vulnerable. No special latitude or any consideration can be given on the ground of petitioner being State. This Court in a Full Bench decision rendered in Municipal Corporation of Ahmedabad v. Voltas Limited, 1994 (2) GLR 1325 clearly laid down that the delay must be explained and

established and the Government Departments and statutory bodies cannot claim condonation of delay on the ground of administrative follow up procedures. The present case is precisely covered by the said Full Bench decision of this Court. Again, in a petition under Article 226/227 of the Constitution of India, this Court is not sitting as an appellate Court against the decision of the Tribunal. Writ jurisdiction of this Court is very much circumscribed in a narrow compass. Essentially, this Court functions as a supervisory authority. This Court cannot reappreciate and re-analyse the factual aspects. The Tribunal on appreciation of facts reached to a positive conclusion that there was inordinate delay on the part of the petitioner in not filing the revision before the Tribunal within the period of limitation.

6. Not only that, even the revision under section 76 of the Tenancy Act has limited scope. Revisional powers of the Gujarat Revenue Tribunal are also circumscribed statutorily under section 76 of the Tenancy Act itself. Section 76 reads as under :

"76. (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957 an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector except an order under section 32P or an order in appeal against an order under sub-section (4) of section 32G on the following grounds only:--

- (a) that the order of the Collector was contrary to law,
 - (b) that the Collector failed to determine some material issue of law, or
 - (c) that there was a substantial defect in following the procedure provided by this Act or that there has been failure to take evidence or error in appreciating important evidence which has resulted in the miscarriage of justice.
- (2) In deciding applications under this section the Gujarat Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Gujarat Revenue Tribunal."

It can be very well seen from the aforesaid provisions

that the impugned order in a revision under section 76 before the Gujarat Revenue Tribunal could be entertained provided:

- (a) the order is shown to be contrary to the provisions of law;
- (b) the authority has failed to determine the material issue of law or there was any substantial defect in following the procedure provided in the Tenancy Act;
- (c) in case of failure to take evidence; or error in appreciating important evidence resulting in miscarriage of justice.

Thus, it becomes explicit that only in the light of any procedural defect or any illegality, the revisional authority, namely, Gujarat Revenue Tribunal could interfere with the impugned order of the Deputy Collector. The Mamlatdar and ALT, Gandhinagar found on facts that respondent No.1 is an agriculturist in view of the provisions of section 2(5) and (6) of the Tenancy Act. This finding of fact recorded by the Mamlatdar and ALT came to be confirmed in a suo motu revision by the Deputy Collector.

7. After having examined the relevant proposition of law in the background of the facts emerging from the record, the authorities below, the Mamlatdar and ALT and the Deputy Collector, Gandhinagar, reached to a positive findings of fact that respondent No.1 was not liable for any action under section 84C of the Tenancy Act as there was no violation of the provisions of section 63. Thus there was positive factual finding that respondent No.1 is an agriculturist. It is also incidentally observed in the impugned orders of the Mamlatdar and ALT and the Deputy Collector that he was holding lands prior to the date of purchasing the land in dispute. In the light of the aforesaid facts and circumstances, the factual aspect concluded by the Mamlatdar and confirmed by the Deputy Collector could hardly be questioned under section 76. Be that as it may. This Court has no hesitation in finding that the present petition is meritless and is required to be rejected.

8. Accordingly, this petition is rejected. Rule discharged. Interim relief shall stand, obviously, vacated. There shall be no order as to costs in the circumstances of the case.

